

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JAMES BRITTINGHAM,

Plaintiff,

No. CIV S-04-0037 LKK DAD P

vs.

R. SANDHAM,

Defendant.

ORDER AND

FINDINGS AND RECOMMENDATIONS

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Plaintiff is a former state prisoner proceeding pro se with this civil rights action. Pursuant to the Scheduling Order filed in this case on April 26, 2006, plaintiff was required to file a pretrial statement on or before January 19, 2007. Plaintiff was cautioned that failure to file a pretrial statement may result in the imposition of sanctions, including dismissal of this action. Plaintiff has not filed a pretrial statement or otherwise responded to the court's scheduling order. No document has been filed by plaintiff in this case since April 26, 2006, except for a notice of change of address filed on May 30, 2006. The undersigned will recommend that this action be dismissed without prejudice. See Fed. R. Civ. P. 16(f); Local Rule 11-110.

Plaintiff is advised that the prisoner mailbox rule does not apply to persons who are not incarcerated. Any objections to these findings and recommendations must be received by the Clerk of the Court for filing within the time specified below.



Accordingly, IT IS HEREBY ORDERED that:

1. Defendants are relieved of the obligation to file a pretrial statement on or before February 2, 2007;

2. Pretrial conference set for February 9, 2007, is vacated;

3. Jury trial set for May 8, 2007, is vacated; and

IT IS RECOMMENDED that this action be dismissed without prejudice.

These findings and recommendations will be submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fifteen days after these findings and recommendations are filed by the Clerk of the Court, any party may file written objections with the court and shall serve a copy of the objections on all other parties. A document containing objections should be titled "Objections to Magistrate Judge's Findings and Recommendations." Any reply to objections shall be filed and served within ten days after service of the objections. The parties are advised that failure to file objections within the specified time may, under certain circumstances, waive the right to appeal the District Court's order. See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

DATED: January 24, 2007.

  
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DALE A. DROZD  
UNITED STATES MAGISTRATE JUDGE

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